

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	In Proceedings Under
	)	Chapter 11
KEVIN C. EDWARDS, individually and	)	
d/b/a KEVIN EDWARDS TRUCKING CO.,	)	BK 94-31072
	)	
Debtor.	)	

**OPINION**

This matter is before the Court on the debtor's objection to the claim of Associates Commercial Corporation ("Associates"). Associates, an oversecured creditor at the time the debtor's Chapter 11 bankruptcy petition was filed, seeks \$14,368.78<sup>1</sup> pursuant to 11 U.S.C. § 506(b)<sup>2</sup> for attorneys' fees, costs and other charges. The basis of the debtor's objection is that these fees are unreasonable under the statute and are, therefore, noncompensable.

The facts are as follows. The debtor, Kevin C. Edwards, originally borrowed \$5,199.55 from Associates on December 27, 1993. In return, Associates took a security interest in several vehicles owned by the debtor. The value of Associates' collateral was \$42,700 at the time the debtor's Chapter 11 petition was filed in October 1994.<sup>3</sup> In addition to granting Associates a security interest in the aforementioned vehicles, the loan agreement also provided that the debtor would be responsible for

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<sup>1</sup>Associates has not filed a formal proof of claim for this amount. This figure is contained in a summary of outstanding charges which was submitted with the debtor's brief in this matter.

<sup>2</sup>11 U.S.C. § 506(b) states:

To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim there shall be allowed the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

<sup>3</sup>There appears to be some dispute between the parties as to the exact value of the collateral. In his petition, the debtor has stated that the collateral has a value of \$42,700. However, Associates has assigned a fair market value of \$38,000 to the property. The Court values the property at \$42,700.

any attorneys' fees and other charges incurred by Associates in the event of a default on the loan.

Associates was represented by both Mr. Paul Berens of Fitch, Bradshaw, Strom & Steele, L.C. in Cape Girardeau, Missouri, and Mr. David Dare of Herren & Dare in St. Louis, Missouri. According to the summary submitted by Mr. Dare on behalf of Associates' counsel, as of March 25, 1996, the total attorneys' fees in this case were \$17,360.74. Of that amount, \$8,326.55 remains unpaid. In addition, Associates seeks to recover late fees and other charges for a total "claim" of \$14,368.78<sup>4</sup>. While the debtor acknowledges that many of these fees and charges were the result of the debtor's failure to make timely payments to Associates, he still contends that Associates' claim is unreasonable and is, therefore, not compensable under 11 U.S.C. § 506(b).

Section 506(b) addresses the allowance of interest, attorneys' fees and other costs to an oversecured creditor. Essentially, this section allows an oversecured creditor to recover, to the extent of the value of its collateral, reasonable attorneys fees, interest and other charges provided for in the parties' agreement. Landmark Financial Services v. Hall, 918 F.2d 1150 (4th Cir. 1990). It is generally held that "reasonable" attorneys' fees are those necessary to the collection and protection of the creditor's claim and includes fees for those actions which a similarly situated creditor might have taken. In re Huhn, 145 B.R. 872 (W.D. Mich. 1992). In determining whether attorneys' fees are reasonable pursuant to § 506(b), courts consider a number of factors, but basically adhere to several principles: "[1] the fees must be claimed pursuant to a contractual agreement between the parties; [2] the time for which [the] fees are claimed must have been spent prudently and efficiently with an eye towards the overarching policy of avoiding the waste of the debtor's estate; and [3] the court, relying on its accumulated expertise and familiarity with such matters, may evaluate the complexity of the case and the skill and efficiency with which it was handled." In re Wonder Corp. of America, 82 B.R. 186, 191 (D. Conn. 1988), aff'd 72 B.R. 580 (Bankr. D. Conn. 1987) (citations omitted). See also In re Mid-State Fertilizer Co., 83 B.R. 555 (Bankr. S.D. Ill. 1988).

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<sup>4</sup>The initial proof of claim filed by Associates was for \$27,698.08. Of this amount, \$1,500 was for attorneys' fees and other charges pursuant to § 506(b). The parties agree that Associates has already received \$37,847.90 from the debtor. It is now seeking to recover this additional \$14,368.78 for a total of \$52,216.68 in order to pay off its loan.

With these factors in mind, a review of the billing statements submitted by Attorney Berens indicates that some of his time entries are unreasonably duplicative and are, therefore, noncompensable under § 506(b). A creditor is entitled to employ counsel of its choice in pursuing bona fide actions against a debtor. However, a creditor “may only charge the debtor with the costs of those services [which are] reasonably necessary to protect its interests.” In re Oliver, 183 B.R. 87 (Bank. W.D. Pa. 1995); In re Villa Capri of Georgia Associates, Ltd. Partnership, 141 B.R. 257 (Bankr. N.D. Ga. 1992). Due to “lumping” of time entries, it was difficult for the Court to discern precisely what portion of Mr. Berens' bill was the result of phone conferences and other communications with local counsel. However, according to the Court's calculations, Mr. Berens expended at least 40.6 hours at \$110 per hour for a total of \$4,466 in communications with Mr. Dare. While the Court realizes that some communication is obviously necessary between Mr. Berens and local counsel, the communications in this case were excessive. The Court finds that \$2,500 is a reasonable amount to have expended in consultation with co-counsel and Mr. Berens' fees shall be reduced by the sum of \$1,966 in order to reflect this amount.

In his objection to claim, the debtor also objects to certain of Mr. Dare's fees. Specifically, the debtor objects to a motion to assemble collateral prepared and filed on behalf of Associates by Mr. Dare. According to Mr. Dare's time records, he expended 8.9 hours at \$ 100 per hour for a total of \$890 in prosecution of this motion. Although this motion was subsequently denied by the Court as unnecessary, Mr. Dare defends the time expended on this motion on the grounds that it was filed in order to give the debtor yet another chance to comply with the terms of the parties' agreement. Mr. Dare asserts that because the motion was filed for the benefit of the debtor, the time spent preparing the motion should be compensable. While the Court believes that Mr. Dare should be paid for some of the time which he spent on this motion, \$890 is an unreasonable amount given that the situation was addressed in a prior stipulation between the parties. The Court finds that \$500 is a reasonable amount for the services rendered in preparation of this motion, and Mr. Dare's bill shall be reduced by \$390.

A third objection raised by the debtor concerns a vehicle repair bill assessed against him by Associates. Apparently, Associates repossessed one of the debtor's vehicles. At about the same time,

Associates also repossessed a vehicle owned by the debtor's brother which was not subject to the security agreement between Associates and the debtor. The debtor alleges that instead of charging him with the specific costs of repair to his vehicle, Associates merely split the repair bill between him and his brother and then charged the debtor with one-half of the expense.<sup>5</sup> According to the debtor, his portion of the repair bill totaled only \$450. However, Associates has submitted evidence, including the repair bill and a statement from a representative of Auto Repair, Inc., which indicates that all of the repair work in question was performed on the debtor's vehicle. The Court finds that the evidence submitted by Associates in this regard is credible. Accordingly, additional repair charges of \$1,250 sought by Associates shall be assessed against the debtor.

In summary, the Court finds that Associates' claim of \$ 14,368.78 must be reduced by \$2,356 for a total claim of \$12,012.78<sup>6</sup>, provided, however, that the property has a value that will support such an allowance. Section 506(b) allows an oversecured creditor to recover as part of its secured claim, "reasonable fees, costs, or charges provided for under the agreement under which such claim arose up to the point where the aggregate claim equals the value of the security." Oliver, 183 B.R. at 92. The Court has determined that Associates has expended reasonable fees and costs in the amount of \$12,012.78. The remaining issue is whether Associates is entitled to receive this entire amount as a secured claim under § 506(b).

Section 506(b) expressly provides that

[t]o the extent that an allowed secured claim is secured by property the value of which... is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

11 U.S.C. § 506(b). The language of § 506(b) is clear. An oversecured creditor may only recover attorneys' fees and other costs to the extent that the value of its collateral exceeds the amount of its allowed

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<sup>5</sup>The total repair bill was \$2,500. Apparently, Associates initially assessed \$1,250 against Kevin Edwards and \$1,250 against his brother, Jack Edwards. Associates now seeks to recover this additional charge of \$1,250 from the debtor.

<sup>6</sup>This is in addition to the sums that Associates has already received on the obligation.

secured claim. In view of this requirement, the Court finds that Associates has the following amount available for payment of attorneys' fees and other costs as part of its allowed secured claim:

Value of Collateral	\$42,700.00
Less: value of Associates' Allowed Secured Claim <sup>7</sup>	(26,198.08)
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Amt. available in excess of value of collateral	16,501.12
Less: previously paid attorneys' fees <sup>8</sup>	( 9,034.19)
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Balance available for Associates' fees and costs under § 506(b)	\$7,466.93

From this analysis, it is clear that Associates' claim for attorneys' fees and other costs in the amount of \$12,012.78 exceeds the balance available to it under § 506(b). Because the Court finds that the fees and costs sought by Associates are reasonable, particularly in light of the fact that many of these additional charges and attorneys' fees were incurred as a result of the debtor's failure to make timely payments, the balance of Associates' claim shall be treated as unsecured. Liberty Nat. Bank & Trust Co. v. George, 70 B.R. 312 (W.D. Ky. 1987). See also Matter of 268 Ltd., 789 F.2d 674 (9th Cir. 1986) (although secured creditor is only entitled to recover reasonable attorneys' fees as part of its allowed secured claim, it is not precluded from seeking remainder of contractual fee, in excess of reasonable fee, as an unsecured claim).

Therefore, Associates shall have a secured claim for attorneys' fees and other costs in the balance of its claim of \$7,466.93. The remaining balance of its claim shall be treated as an unsecured claim.

SEE WRITTEN ORDER.

ENTERED: May 1, 1996

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<sup>7</sup>A claim is an "allowed secured claim" where a timely proof of claim is filed and no party in interest objects to that claim. In re Busman, 5 B.R. 332, 340 (Bankr. E.D.N.Y. 1980). In the instant case, Associates filed an initial proof of claim in the amount of \$27,698.08 on November 18, 1994. Included in this amount was a claim for attorneys' fees and costs in the amount of \$1,500 pursuant to § 506(b). However, under § 506(b), requests for attorneys' fees are not part of the allowed secured claim but are, rather, in addition to the claim. Therefore, the Court determines that the amount of Associates' allowed secured claim is \$26,198.08.

<sup>8</sup>According to the summary of charges submitted by Associates with its brief, the total attorneys' fees incurred in this matter by Associates was \$17,360.74. Of this amount, \$8,326.55 is still due. Therefore, the debtor has already paid \$9,304.19 in attorneys' fees.

/s/ Kenneth J. Meyers  
UNITED STATES BANKRUPTCY JUDGE